

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Sprint PCS and AT&T)	WT Docket No. 01-316
File Petitions for Declaratory Ruling)	
On CMRS Access Charge Issues)	

COMMENTS OF NEXTEL PARTNERS, INC.

Nextel Partners, Inc. (“Nextel Partners”), by its attorneys, hereby submits these comments in support of the “Sprint PCS Petition For Declaratory Ruling” in the above-captioned proceeding.¹ Specifically, the Commission should rule that existing policy allows a commercial mobile radio services (“CMRS”) carrier to recover termination access charges directly from an interexchange carrier (“IXC”). AT&T’s contention that an IXC has the legal right to free service on a CMRS network by refusing to compensate the CMRS for “exchange access” costs is unsupportable.

AT&T acknowledges that the “bill and keep” practice for CMRS carrier termination of IXC traffic is purely *voluntary*.² Moreover, AT&T points to no Commission rule or policy that prevents a CMRS provider from recovering its call termination costs directly from an IXC. In fact, as Sprint PCS points out, while the Commission determined to forbear from a tariff filing

¹ Sprint PCS and AT&T File Petitions for Declaratory Ruling On CMRS Access Charge Issues, *Public Notice*, DA 01-2618, WT Docket No. 01-316 (rel. Nov. 8, 2001).

² AT&T Petition For Declaratory Ruling, at 4.

requirement for CMRS interstate access service it recognized the right of CMRS carriers to “just and reasonable compensation for their provision of access.”³

By refusing to compensate CMRS carriers for exchange access costs, IXC, such as AT&T, are able to unfairly shift the burden of these costs to the customers of CMRS carriers. There is no justifiable reason for CMRS customers to be forced to subsidize the long distance rates of the IXCs.

AT&T’s scheme is designed to obtain a windfall for the IXCs because as Sprint PCS points out, termination costs are already imbedded in the rates of the IXCs.⁴ There is no discount to the long distance customer for calls made to a wireless phone rather than a wireline phone, even though the IXC pays termination access charges to the wireline carrier but not to the CMRS carrier. Thus, AT&T and other IXCs reap an unfair benefit on calls to wireless customers. Fundamental fairness and competitive neutrality between wireless and wireline carriers demand that CMRS carriers have the same rights as wireline carriers to recover IXC exchange access costs directly from the IXCs.

A CMRS carrier has a local network that originates and terminates interexchange calls for the IXCs. Any refusal to pay for this access function when the same function, when provided by a wireline carrier, is compensated raises serious discrimination issues under Section 202(a) of the Communications Act. If an IXC and a CMRS carrier do not have other commercial arrangements, the IXC should be required to treat the CMRS carrier in the same manner as it treats local exchange wireline carriers with respect to access charges.

³ Sprint PCS Petition For Declaratory Ruling, at 6.

⁴ Sprint PCS Petition For Declaratory Ruling, at 10

Pursuant to the Telecommunications Act of 1996, the Commission recently recognized the CMRS industry's right to recover incumbent local exchange carriers ("ILEC") caused termination costs.⁵ The Commission should now grant the Declaratory Ruling requested by Sprint PCS and acknowledge the right of CMRS carriers to recover termination costs caused by IXCs. The Telecommunications Act of 1996 encourages voluntary arrangements for compensation between carriers. However, in the absence of a voluntary arrangement, the Commission has already determined that IXC traffic termination costs can be recovered by the use of access charges. CMRS carriers, therefore, should, in the absence of alternative voluntary arrangements, be permitted to collect access fees from IXCs.

In view of the foregoing, the Commission should grant the Petition For Declaratory Ruling submitted by Sprint PCS and deny the Petition For Declaratory Ruling filed by At&T.

Respectfully submitted,

Nextel Partners, Inc.

By: /s/ Albert J. Catalano
Albert J. Catalano
Matthew J. Plache
Catalano & Plache, PLLC
3221 M Street, NW
Washington, DC 20007

Its Attorneys

November 30, 2001

⁵ See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 15517 (1996), *aff'd Iowa Utils. Bd. v. FCC*, 135 F.3d 535 (U.S. App. 8th Cir. 1998), *aff'd AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

CERTIFICATE OF SERVICE

I hereby certify that a true and complete photocopy of the foregoing "Comments" was served November 30, 2001 by U.S. Mail, first-class postage prepaid, on each of the following:

Mark C. Rosenblum
Judy Sello
AT&T Corp.
Room 1135L2
295 North Maple Avenue
Basking Ridge, NJ 07920

Charles McKee
General Attorney
Sprint PCS
6160 Sprint Parkway
Mail Stop: KSOPHIO414-4A325
Overland Park, KS 66251

Daniel Meron
Jennifer M. Rubin
Sidley Austin Brown & Wood
1501 K Street, NW
Washington, DC 20005

/s/Matthew J. Plache

Matthew J. Plache